

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Battery Recycling Company Inc.

RESPONDENT

Administrative Order

CAA-02-2012-1004

PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA) Region 2, Director of the Caribbean Environmental Protection Division (CEPD) issues this COMPLIANCE ORDER, pursuant to the Clean Air Act, 42 U.S.C. § 7401 et seq. ("CAA" or "Act"), Section 113(a) and 114, 42 U.S.C. § 7413(a) and 7414, to the Battery Recycling Company Inc. ("BRC" or "Respondent") for violations of the Act at its secondary lead smelting facility (Facility) located on Puerto Rico Road # 2, KM 72.2, Cambalache Ward, Arecibo, Puerto Rico. The authority to find a violation and issue compliance orders in the Commonwealth of Puerto Rico and the US Virgin Islands has been delegated to the Director from the Administrator through the Regional Administrator.

In this Administrative Order, the Director finds Respondent to be in violation of several applicable regulations of the general provisions of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, 40 C.F.R. Part 63, Subpart A (NESHAP General Provisions), and the NESHAP for Secondary Lead Smelting, 40 C.F.R. Part 63 Subpart X (Secondary Lead Smelting MACT). Therefore, pursuant to Section 113(a)(3) of the Act, the Director issues this Compliance

Order.

STATUTORY BACKGROUND

1. Section 112(b) of the Act establishes a list of hazardous air pollutants (HAPs).
2. Section 112(c) of the Act directs EPA to publish a list of all categories and subcategories of major sources and area sources of HAPs.
3. Section 112(d) of the Act directs EPA to promulgate regulations establishing emission standards for each category or subcategory of major and area sources of HAPs.
4. Section 112 (a)(1) of the Act defines "major source" as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls in the aggregate, ten (10) tons or more of any hazardous air pollutant or twenty-five (25) tons per year or more of any combination of hazardous air pollutants.
5. Section 112 (a)(2) of the Act defines "area source" as any stationary source of hazardous pollutants that is not a major source.
6. Section 113(a)(3) of the Act authorizes issuance of Orders where EPA finds a person violated rules promulgated pursuant to, among other sections of the Act, Sections 111, 112, and 114.
7. Section 112(i)(3) of the Act provides that after the effective date of any emissions standard, limitation or regulation promulgated pursuant to Section 112 and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation.

8. Section 114(a)(1) of the Act authorizes the EPA to require owners or operators of emission sources to submit specific information regarding facilities, establish and maintain records, make reports, sample emission points, and to install, use and maintain monitoring equipment or methods in order to determine whether any person is in violation of the Act.
9. The term "person" defined in Section 302(e) of the Act, includes corporation.

REGULATORY BACKGROUND

NESHAP General Provisions

10. On March 16, 1994, pursuant to the authority of Sections 112 and 114 of the Act, EPA promulgated the NESHAP General Provisions, set forth at 40 C.F.R §§ 63.1- 63.16.
11. The NESHAP General Provisions at 40 C.F.R. § 63.1(a)(4) provide that each relevant standard in Part 63 must identify explicitly whether each provision of the NESHAP General Provisions is or is not included in such relevant standard.
12. The NESHAP General Provisions at 40 C.F.R. § 63.2 define "affected source" as the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the Act.

13. The NESHAP General Provisions at 40 C.F.R. § 63.4(a)(2) provide that no owner or operator subject to the provisions of this part shall fail to keep records, notify, report, or revise reports as required under this part.
14. The NESHAP General Provisions at 40 C.F.R. § 63.7(a)(2) establish that if required to do performance testing by a relevant standard, and unless a waiver of performance testing is obtained under this section or the conditions of 40 C.F.R. § 63.7(c)(3)(ii)(B) apply, the owner or operator of the affected source must perform such tests within 180 days of the compliance date for such source.
15. The NESHAP General Provisions at 40 C.F.R. § 63.7(a)(3) establish that the Administrator may require an owner or operator to conduct performance tests at the affected source at any other time when the action is authorized by section 114 of the Act.
16. The NESHAP General Provisions at 40 C.F.R. § 63.7(a)(4) establish that if a force majeure is about to occur, occurs, or has occurred for which the affected owner or operator intends to assert a claim of force majeure, (i) through (iv) of this section must be followed.
17. The NESHAP General Provisions at 40 C.F.R. § 63.7(b)(1) require that the owner or operator of an affected source shall notify the Administrator in writing of his or her intention to conduct a performance test at least 60 calendar days before the initial performance test is scheduled to begin to allow the Administrator, upon request, to review and approve the site-specific test plan required under 40 C.F.R. § 63.7(c) and to have an observer present during the test.

18. The NESHAP General Provisions at 40 C.F.R. § 63.7(c)(2)(i) requires that before conducting a required performance test, the owner or operator of an affected source shall develop and, if requested by the Administrator, shall submit a site-specific test plan to the Administrator for approval. The test plan shall include a test program summary, the test schedule, data quality objectives, and both an internal and external quality assurance (QA) program. Data quality objectives are the pretest expectations of precision, accuracy, and completeness of data.
19. The NESHAP General Provisions at 40 C.F.R. § 63.7(e)(1) requires that the performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test, nor shall emissions in excess of the level of the relevant standard during periods of startup, shutdown, and malfunction be considered a violation of the relevant standard unless otherwise specified in the relevant standard or a determination of noncompliance is made under § 63.6(e). Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.
20. The NESHAP General Provisions at 40 C.F.R. § 63.8 state that the owner or operator of an affected facility shall conduct required initial performance tests and furnish EPA with a written report of the results within 60 days after achieving the

maximum production rate at which it will be operated, but not later than 180 days after the initial startup of such facility.

21. The NESHAP General Provisions at 40 C.F.R. § 63.9 provide the notification requirements for affected sources.
22. The NESHAP General Provisions at 40 C.F.R. § 63.9(a)(4)(ii) state that an the owner or operator of an affected source (in such states with delegated authority) subject to such requirements shall submit notifications to the delegated state authority (which may be the same as the permitting authority). In addition, it states that if the delegated (permitting) authority is the state, the owner or operator shall send a copy of each notification submitted to the state to the appropriate Regional Office of the EPA, as specified in § 63.9(a)(4)(i). It also states that the Regional Office may waive this requirement for any notifications at its discretion.
23. The NESHAP General Provisions at 40 C.F.R. § 63.10(d)(1) require the owner or operator of an affected source shall report the results of the performance test to the Administrator (or the State with an approved permit program) before the close of business on the 60th day following the completion of the performance test, unless specified otherwise in a relevant standard or as approved otherwise in writing by the Administrator. It also states that the results of the performance test shall be submitted as part of the notification of compliance status required under 40 C.F.R. § 63.9(h).

Secondary Lead Smelting MACT

24. On June 23, 1995, under the authority of Sections 112 and 114 of the Act, EPA promulgated the Secondary Lead Smelting MACT, set forth at 40 C.F.R. §§ 63.541 - 63.551. The regulations became effective upon promulgation and were subsequently amended on several dates.
25. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.541(a) provides that it applies to the following affected sources at all secondary lead smelters: blast, reverberatory, rotary, and electric furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive emission sources; buildings containing lead bearing materials; and fugitive dust sources.
26. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.541(b) provides a table in which it indicates 40 C.F.R. §§ 63.1, 63.2, 63.3, 63.4, 63.5, 63.6(a)-(c), (e), (f), (g), (i) and G), 63.6(d) and (h), 63.7, 63.8, 63.9(a)-(e), (g), (h)(1)-(3), (h)(5-6), and G), 63.9(f) and (h)(4), 63.10, 63.11, 63.12 to 63.15 are applicable to owners and operators of secondary lead smelters subject to the Secondary Lead Smelting MACT.
27. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.543(a) states that no owner or operator of a secondary lead smelter shall discharge or cause to be discharged into the atmosphere from any existing, new, or reconstructed blast, reverberatory, rotary, or electric smelting furnace any gases that contain lead compounds in excess of 2.0 milligrams of lead per dry standard cubic meter (0.00087 grains of lead per dry standard cubic foot). As of January 5, 2012, amendments to the Secondary Lead Smelting MACT establish that existing

sources must maintain the concentration of lead compounds in any process vent gas at or below 1.0 milligrams of lead per dry standard cubic meter (0.00043 grains of lead per dry standard cubic foot). The flow-weighted average concentration of lead compounds in vent gases from a secondary lead smelting facility must also be maintained at or below 0.20 milligrams of lead per dry standard cubic meter (0.00087 grains of lead per dry standard cubic foot).

28. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.543(h) requires annual compliance testing for lead compounds no later than 12 months following performance of the initial performance test required to demonstrate compliance with 40 C.F.R. § 63.543(a).
29. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.543(i) provides that if a compliance test demonstrates a source emitted lead compounds at 1.0 milligram of lead per dry standard cubic meter (0.00044 grains of lead per dry standard cubic foot) or less during the time of the compliance test, the owner or operator of a secondary lead smelter shall be allowed up to 24 calendar months from the previous compliance test to conduct the next annual compliance test for lead compounds¹. As of January 5, 2012, amendments to the Secondary Lead Smelting MACT at 40 C.F.R. § 63.543(g) establish, that following the initial performance or compliance test to demonstrate compliance with the lead emissions limits specified in paragraph 40 C.F.R. § 63.543(a), the owner or operator must conduct performance tests according to one of the following

¹ This was the existing regulation that applied at the time Respondent conducted the initial performance test required to demonstrate compliance with 40 C.F.R. § 63.543(a).

schedules: an annual performance test for lead compounds from each process vent (no later than 12 calendar months following the previous compliance test), unless a CEMS was installed and operated meeting the requirements of § 63.8 [see 40 C.F.R. § 63.543(g)(1)]; or if an annual compliance test demonstrates that a process vent emitted lead compounds at 0.10 milligram of lead per dry standard cubic meter or less during the time of the annual compliance test, the owner or operator may submit a written request to the Administrator applying for an extension of up to 24 calendar months from the previous compliance test to conduct the next compliance test for lead compounds [see 40 C.F.R. § 63.543(g)(2)].

30. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.549(a) requires each owner or operator of a secondary lead smelter to comply with all of the notification requirements of the NESHAP General Provisions at 40 C.F.R. § 63.9.

FINDINGS OF FACTS

31. Respondent has owned and operated the Facility, a vehicle battery recycling plant, since 1996.
32. At Respondent's Facility, used vehicle batteries are recycled in the following manner: the batteries are first placed in a shredder where they are broken and crushed, and then broken plastic is separated from the lead and lead oxides. The lead and lead oxides are then loaded into reverberatory furnace. The lead is then further refined in one of three cupola furnaces. Each reverberatory furnace can

smelt ten (10) tons of lead per production run. The plant produces about 66.67 tons of elemental lead per day.

33. Respondent commenced construction at the Facility, and in May 2003 began operating, a secondary lead smelting process. During this initial smelting process, Respondent used a reverberatory furnace (hereinafter "First Furnace"). Respondent replaced the First Furnace in 2007 with a second reverberatory furnace (hereinafter "Second Furnace").
34. In June 2010, Respondent installed and began operating an additional furnace (hereinafter "Third Furnace") at its Facility.
35. In April 2011, an EPA official conducted a series of inspections at the Facility and a review of the Facility records (Inspections).
36. An EPA official also performed a review of EPA records (File Review).
37. The Inspections and File Review revealed, among others, that for the Second and for the Third Furnaces, Respondent conducted performance tests for emissions of lead compounds, opacity and particulate matter (PM) from the associated air pollution control devices as required by 40 C.F.R. §§ 60.8(a) and 63.7(a)(2) in February 2010 and in June 2010, respectively.
38. On August 9, 2011, EPA issued an administrative compliance order (CO) to Respondent to address its noncompliance with the New Source Performance Standards (NSPS) regulations, 40 C.F.R. Part 60, Subpart A (NSPS General Provisions), the NSPS for Secondary Lead Smelters regulations, 40 C.F.R. Part 60, Subpart L (Secondary Lead Smelter NSPS), the NESHAP General Provisions and the Secondary Lead Smelting MACT.

39. The CO directed Respondent to improve monitoring, reporting and preventative actions and implement operational improvements at the Facility. Among these ordered provisions, Respondent was required to submit the results of the 2010 performance tests conducted on the air pollution control devices associated with the Second and Third Furnaces in February 2010 and June 2010, respectively, as required by 40 C.F.R. § 63.7(g)(1), and the Notification of Compliance Status required by 40 C.F.R. §§ 63.9(h)(2) and 63.549.
40. On October 31, 2011, Respondent provided EPA with a copy of the results of the 2010 performance tests for the Second and Third Furnaces. The results indicated that the lead compound emission rate was 0.000024 and 0.00002 grains of lead per dry standard cubic foot for the Second and Third Furnaces, respectively.
41. On February 2, 2012, Respondent requested EPA authorization to conduct the required stack testing on the Second Furnace simultaneously with the testing on the Third Furnace in May 2012 due to their contractor's availability (the stack testing on the Second Furnace was due in February 2012 and Respondent was interested in completing the testing for the Second Furnace and the Third Furnace at the same time).

CONCLUSIONS OF LAW

42. Respondent is the owner and/or operator of reverberatory furnaces (including the Second and Third Furnaces) and refining kettles, which are "affected sources," within the meaning 40 C.F.R. § 63.541(a). Therefore, Respondent is subject to the Secondary Lead Smelting MACT and the NESHAP General Provisions specified in the Secondary Lead Smelting MACT.
43. Respondent's Facility is a "secondary lead smelter" within the meaning of 40 C.F.R. § 63.542.
44. Respondent had up to 24 calendar months from the date of the 2010 compliance tests (by February 2012) to conduct the next annual compliance test for lead compounds on the Second Furnace since the source emitted less than 1.0 milligram of lead per dry standard cubic meter (0.00044 grains of lead per dry standard cubic foot) during the time of the 2010 compliance test, as allowed by 40 C.F.R. § 63.543(i).
45. Respondent's justification for seeking an extension of time to conduct the next annual compliance test for lead compounds on the Second Furnace does not qualify as force majeure as required by 40 C.F.R. § 63.7(a)(4).
46. Respondent violated the Secondary Lead Smelting MACT and the NESHAP General Provisions specified in the Secondary Lead Smelting MACT by failing to conduct the performance tests within 24 calendar months of the previous compliance test for the Second Furnace as required by 40 C.F.R. § 63.543(i).

ORDER

In concurrence with the Findings of Facts above, pursuant to Section 113(a)(3) of the Act, IT IS DETERMINED AND ORDERED that:

I.

The provisions of this Order shall apply to Respondent and to its officers, agents, servants, employees, successors and to all persons, firms and corporations acting under, through or for Respondent.

II.

Respondent shall complete all performance testing on the air pollution control devices associated with the Second and Third Furnaces required by 40 C.F.R. §§ 63.7 and 63.543(g) through (i) by **July 31, 2012**. Respondent shall conduct each test run of the stack test for at least six hours (the nominal duration of Respondent's batch process), and/or representative baghouse cleaning cycles whichever is greater.

III.

Respondent shall submit a site-specific test plan, as required by 40 C.F.R. § 63.7(c)(2)(i), to EPA within **fourteen (14) days** from the effective date of this Order for review and approval before conducting the required performance test. The plan shall fully describe Respondent's operations, facility equipment, and production processes. The plan shall contain, but not be limited to:

- adequate facility equipment block diagrams, including engineering drawing(s) of its facility and equipment from points of emissions generation,

including fugitive emissions, through the end of the respective exhaust stack including but not limited to furnaces and other manufacturing equipment, baghouses, enclosures, ducts for air/emissions transport, draft-inducing fans, flow guide vanes, and process monitoring/measuring equipment;

- a detailed “as-built” drawing of its exhaust stack and exhaust duct work from the two baghouses to identifying how the flow paths are combined into the single exhaust stack;
- plant operations data, including pertinent manufacturing operating data, including but not limited to the amount of materials processed, number and types of equipment operating, pressure drop across baghouse modules, and number of operating baghouse modules will be collected during the testing program; and
- from the effective date of this Order, provide two years of historical baghouse operation monitoring data collected pursuant to 40 C.F.R. § 63.548.

IV.

Respondent shall notify EPA and the Puerto Rico Environmental Quality Board (PREQB) at least **fifteen (15) days** prior to the scheduled date of the performance tests to allow both agencies to witness the tests.

V.

Respondent shall provide to EPA a copy of the results of the performance testing at the Second Furnace and Third Furnace to EPA and PREQB within **thirty (30) days** of the completion of the tests.

VI.

All reports and notices required by the Order shall be submitted to:

Mr. José Soto, Acting Chief
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
Environmental Protection Agency - Region 2
City View Plaza II, Suite 7000
#48 RD. 165 km 1.2
Guaynabo, PR 00968-8069.

Copies of the reports and notices are also required to be submitted to:

Mr. Luis Sierra, Director
Air Quality Area
Puerto Rico Environmental Quality Board
P. O. Box 11488
Santurce, Puerto Rico 00910.

BUSINESS CONFIDENTIALITY

Respondent may assert a business confidentiality claim covering part or all of the information this Compliance Order requires only to the extent and in the manner described in 40 C.F.R. § 2.203. EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a confidentiality claim, EPA may make the information available to the public by EPA without further notice to Respondent.

ENFORCEMENT

Section 113(a)(3) of the Act authorizes EPA to take any of the following actions in response to Respondent's violation of the NSPS or failure to comply with the above Order:

- issue an administrative penalty order, for penalties up to \$25,000 per day pursuant to Section 113(d) of the Act and adjust the maximum penalty provided by the Act up to \$27,500 per day for each violation that occurs from January 30, 1997 through March 15, 2004, \$32,500 per day for each violation that occurs after March 15, 2004, \$32,500 for violations that occurred after March 15, 2004 through January 12, 2009, and up to \$37,500 for violations that occurred after January 12, 2009 in accordance with the Debt Collection Improvement Act, 31 U.S.C. § 3701 et seq., (DCIA), and 40 C.F.R. Part 19, promulgated pursuant to the DCIA; or
- bring a civil action pursuant to Section 113(b) of the Act for injunctive relief and/or civil penalties and adjust these penalties for inflation in accordance with the DCIA and 40 C.F.R. Part 19.

Failure to comply with this Compliance Order may result in an administrative or civil action for appropriate relief as provided in Section 113 of the Act. EPA retains full authority to enforce the requirements of the Act, and nothing in this Compliance Order shall be construed to limit that authority. Furthermore, the United States may seek fines and/or imprisonment of any party who knowingly violates the Act or an Order issued pursuant to Section 113 of the Act. Upon conviction, any facility owned by such party

may be declared ineligible for federal contracts, grants or loans, (42 U.S.C. § 7606, 40 C.F.R. Part 15).

PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the Act states that if a penalty is assessed pursuant to Section 113 or Section 304(a) of the Act, the Administrator or the court, as appropriate, shall consider the following factors in determining the amount of penalty to be assessed: the size of the violator's business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and other factors as justice may require.

Section 113(e)(2) of the Act allows the Administrator or the Court, as appropriate, to assess a penalty for each day of violation. In accordance with Section 113(e)(2) of the Act, EPA will consider a violation to continue from the date the violation began until the date the Respondent establishes that it has achieved continuous compliance. If Respondents prove that there was an intermittent day of compliance or that the violation was not continuous in nature, then EPA will reduce the penalty accordingly.

EFFECTIVE DATE AND OPPORTUNITY FOR CONFERENCE

Pursuant to Section 113(a)(4) of the Act, Respondent may request a conference with EPA concerning the violations alleged in this Compliance Order. Respondent may present evidence bearing on the finding of violations, the nature of the violations, and on any efforts Respondent may have taken or propose to take to achieve compliance. Respondent may arrange to have legal representation at the conference, at its own expense.

Within ten (10) days from receipt of this Compliance Order, Respondent may request, and confirm in writing, a conference to be held no later than thirty (30) days from receipt of this Compliance Order. If the requested conference is held, this Compliance Order shall become effective five (5) days after the conference is held. If Respondent does not meet with EPA, this Compliance Order shall become effective after ten (10) days from its receipt.

A request for a conference or other inquiries concerning this Compliance Order shall be made in writing, directed to:

Héctor L. Vélez Cruz
Assistant Regional Counsel
Office of Regional Counsel, Caribbean Team
US Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
#48 RD. 165 km 1.2
Guaynabo, PR 00968-8069
(787) 977-5850 (phone)
(787) 729-7748 (fax).

Notwithstanding the effective date and opportunity for conference discussed above, Respondents must comply with all applicable requirements of the Act.

Issued:

Issued April 25, 2012



José C. Font, Acting Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency-Region 2

To: **Luis Figueroa, President**
Battery Recycling Company, Inc.
P.O. Box 1016
Arecibo, Puerto Rico 00613-1016